UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.118
25 April 2000

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Republic of the Congo

GE.00-41617 (E)

13 April 2000

Concluding observations on the second periodic report of the Republic of the Congo

1. The Committee considered the second periodic report of the Republic of the Congo (CCPR/C/63/Add.5) at its 1813th and 1814th meetings (CCPR/C/SR.1813 and 1814), held on 13 and 14 March 2000, and adopted the following concluding observations at its 1823rd and 1824th meetings (CCPR/C/SR.1823 and 1824), held on 21 and 22 March 2000.

Introduction

2. The Committee welcomed with interest the submission of the second periodic report of the Republic of the Congo and the supplementary written information provided on the period since the submission of that report. It also noted the delegation's commitment to submit additional information on, inter alia, the implementation of the Covenant by the Congolese courts.

3. The Committee expresses its satisfaction at the efforts made by the delegation to provide answers to the questions asked. It regrets, however, that the report was submitted six years late and more as a matter of form, in that it is limited to a description of legal measures and does not refer to any implementation in practice. The Committee regrets that the precise information which it had requested was not fully provided.

4. The Committee notes that the delegation itself acknowledged that, during the civil wars that have raged in the Congo since 1993-1994, serious human rights violations occurred and that peace and reconciliation are now fundamental priorities.

5. The Committee notes the statements on creating conditions conducive to respect for human rights and the functioning of Congolese institutions according to the rule of law. It notes that a constitutional referendum is scheduled for 2000 and presidential elections for 2001.

6. The Committee takes note of the information provided by the delegation on the establishment of a National Human Rights Commission by the end of 2000 and on the organization of a human rights education and awareness campaign.

Main positive aspects

7. The Committee expresses its satisfaction at the return home of more than half the displaced population and hopes that this process, having begun, will be completed as soon as possible.. It also welcomes the return of refugees, and the return to their villages of persons who had taken refuge in the forests.

Principal subjects of concern and recommendations

8. The Committee is gravely concerned at the information provided on summary and extrajudicial executions, disappearances and arbitrary arrests and detentions carried out in the

past seven years not only by the armed forces but also by the militias and other paramilitary groups, as well as by foreign soldiers, in violation of articles 6, 7 and 9 of the Covenant.

The State party should conduct all appropriate inquiries and investigations into these crimes and take the necessary measures for bringing the perpetrators to justice and effectively protecting the right to life and to security of person.

9. The Committee regrets that the precise information which it had requested on the status of women was not fully provided.

The State party should take the necessary steps to increase women's participation, without discrimination, in political and social life, in accordance with article 3 of the Covenant. It should provide fuller information, including statistics, on the status of women in its next report.

10. The Committee is also gravely concerned at the rape of women and the perpetration of other forms of violence against them by armed men, and is disturbed at the extent and persistence of these crimes, in violation of the obligations imposed under articles 3, 7 and 9 of the Covenant.

The State party should give women the necessary protection and assistance, ensure the reintegration of rape victims and do everything possible to identify and prosecute the perpetrators of these crimes.

11. The Committee is concerned at the persistence of polygamy, in violation of articles 3 and 26 of the Covenant.

The State party should take the necessary steps to abolish polygamy and to implement educational measures to prevent it.

12. The Committee observes that the political desire for an amnesty for the crimes committed during the periods of civil war may also lead to a form of impunity that would be incompatible with the Covenant. It considers that the texts which grant amnesty to persons who have committed serious crimes make it impossible to ensure respect for the obligations undertaken by the Republic of the Congo under the Covenant, especially under article 2, paragraph 3, which requires that any person whose rights or freedoms recognized by the Covenant are violated shall have an effective remedy. The Committee reiterates the view, expressed in its General Comment 20, that amnesty laws are generally incompatible with the duty of States parties to investigate such acts, to guarantee freedom for such acts within their jurisdiction and to ensure that they do not occur in the future.

The State party should ensure that these most serious human rights violations are investigated, that those responsible are brought to justice and that adequate compensation is provided to the victims or their families.

13. The Committee is concerned at the use of torture and cruel, inhuman or degrading treatment and at the failure to criminalize torture as such in internal law in such a way that it is no longer possible to treat cases of torture as simple cases of voluntary infliction of blows and wounds.

The State party should take effective measures, in accordance with articles 7 and 10 of the Covenant, to combat torture, to criminalize torture and other cruel, inhuman or degrading treatment or punishment in internal law, to punish the perpetrators of such crimes and, in future, to avoid treating cases of torture as simple cases of voluntary infliction of blows and wounds.

14. The Committee expresses its concern at the attacks on the independence of the judiciary, in violation of article 14, paragraph 1, of the Covenant. It draws attention to the fact that such independence is limited owing to the lack of any independent mechanism responsible for the recruitment and discipline of judges, and to the many pressures and influences, including those of the executive branch, to which judges are subjected.

The State party should take the appropriate steps to ensure the independence of the judiciary, in particular by amending the rules concerning the composition and operation of the Supreme Council of Justice and its effective establishment. The Committee considers that particular attention should be given to the training of judges and to the system governing their recruitment and discipline, in order to free them from political, financial and other pressures, ensure their security of tenure and enable them to render justice promptly and impartially. It invites the State party to adopt effective measures to that end and to take the appropriate steps to ensure that more judges are given adequate training.

15. The Committee notes the precarious conditions of prisoners who are not being held in the central prison of Brazzaville, which are incompatible with article 10 of the Covenant.

The State party should guarantee minimum conditions for all prisoners and should provide them, inter alia, with the necessary medical care.

16. The Committee regrets that the Republic of Congo has maintained its reservation to article 11 of the Covenant.

It calls on the State party to withdraw that reservation, bring articles 386 to 393 of the code of Civil, Commercial, Administrative and Financial Procedure into line with the Covenant and make sure that no one is imprisoned for debt.

17. The Committee is concerned at the violations of secrecy of correspondence in the Republic of the Congo and at the repercussions of such violations.

It reminds the State party of its obligations in that regard under article 17 of the Covenant and requests it to draft rules and procedures to guarantee the secrecy of correspondence and to punish violations of such secrecy.

18. The Committee is deeply concerned at the tendency of political groups and associations to resort to violent means of expression and to set up paramilitary structures that encourage ethnic hatred and incite discrimination and hostility.

The Committee calls on the State party, in accordance with articles 20 and 22 of the Covenant, to take effective steps to combat hatred, violence and discrimination and to impose on all actors and political forces rules of conduct and behaviour that are compatible with human rights, democracy and the rule of law.

19. The Committee is concerned at the increase in the number of at-risk children due, inter alia, to civil wars. It is deeply concerned in particular at the enlistment of children in armed groups and militias.

The State party should redouble its efforts to take care of these children, assist them, ensure them adequate development and adopt measures to afford them the protection required by their status as minors, in accordance with article 24 of the Covenant.

20. The Committee notes with concern that the Congolese people have been unable, owing to the postponement of general elections, to exercise their right to self-determination in accordance with article 1 of the Covenant and that Congolese citizens have been deprived of the opportunity to take part in the conduct of public affairs in accordance with article 25 of the Covenant.

The Committee calls on the State party to organize general elections as soon as possible in order to enable its citizens to exercise their rights under articles 1 and 25 of the Covenant and, thus, to participate in the process of reconstruction of the country.

21. The Committee regrets the lack of specific information on the different ethnic groups in the Congo, particularly the Pygmies, and on measures taken to guarantee, simultaneously, the full and equal enjoyment of their civil and political rights and respect for their rights under article 27, to enjoy their own cultural traditions.

More detailed information on this matter and on the measures taken to protect the rights of persons belonging to minority groups should be provided in the State party's third periodic report.

22. In submitting its third periodic report, which is expected by 31 March 2002, the State party must take into account the consolidated guidelines for State reports (CCPR/C/66/GUI). It must ensure that its third periodic report and the present observations are broadly disseminated. In that report, it must, inter alia, provide information on the said observations and on the follow-up actions taken in that regard.

UNITED
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International covenant
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Distr.
GENERAL

CCPR/C/79/Add.119
25 April 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

United Kingdom and Northern Ireland - the Crown Dependencies of Jersey,
Guernsey and the Isle of Man

GE.00-41621 (E)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

United Kingdom and Northern Ireland - the Crown Dependencies of Jersey, Guernsey and the Isle of Man

1. The Committee considered the fourth and fifth periodic reports of the United Kingdom and Northern Ireland regarding the Crown Dependencies of Jersey, Guernsey and the Isle of Man (CCPR/C/95/Add.10 and CCPR/C/UKCD/99/5) at its 1818th and 1819th meetings (see CCPR/C/SR.1818-1819) held on 17 March 2000 and adopted the following concluding observations at its 1827th meeting (see CCPR/C/SR.1827) held on 23 March 2000.

A. Introduction

2. The Committee welcomes the submission of the State party's fourth and fifth periodic reports concerning these territories and appreciates the opportunity to examine them, but regrets the delay in the submission of the fourth periodic report. The Committee also appreciates the useful core document submitted by the State party and the constructive and open dialogue it had with the State party's delegation.

3. The Committee welcomes the information provided in the reports on developments in domestic legislation relating to the promotion and protection of rights recognized under the Covenant. The Committee observes, however, that while the reports provide details on progress made through new legislation, they contain little information on actual practice. The State party should ensure that all concerns are reported upon, even when those concerns have not yet been addressed.

B. Positive aspects

4. The Committee notes with satisfaction that the domestic courts in several cases have had regard to the Covenant (art. 2).

5. The Committee welcomes the Administrative Decisions (Review) (Amendment) (Jersey) Law 1995 which provides for a system of administrative appeals against decisions of committees, departments and officials of the States of Jersey to an independent review board (arts. 2 and 14).

6. The Committee welcomes the withdrawal on 2 February 1993 of the State party's reservation to subparagraph (c) of article 25 which, inter alia, applied to jury service in the Isle of Man.

7. The Committee welcomes the various steps taken in all territories to combat any discrimination on the basis of sex and race. The Committee notes with appreciation the information provided by the delegation that all distinctions based on sex have been abolished

with regard to inheritance of realty in Sark. The Committee also welcomes the steps taken in Jersey to eliminate differences between the rights of children born in wedlock and the rights of those born out of wedlock (arts. 3, 24 and 26).

C. Principal subjects of concern and recommendations

8. The Committee strongly urges the State party to ensure that all Covenant rights are given effect in domestic law (art. 2).

9. The Committee recommends that human rights education be extended to members of the police force, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training. Human rights education should also be incorporated at every level of general education (art. 2).

10. The Committee recommends that the authorities in Guernsey and the Isle of Man give due consideration to establishing independent bodies with a mandate to review administrative decisions (arts. 2 and 14).

11. The Committee notes the information provided by the delegation that corporal punishment is not permitted in schools on the Isle of Man as a matter of policy, and recommends the adoption of legislation to outlaw corporal punishment (arts. 7 and 10).

12. The Committee notes the information provided by the delegation that steps are being taken in the United Kingdom to ensure that its anti-terrorism laws comply with article 9 of the Covenant, and urges Jersey, Guernsey and the Isle of Man to take corresponding measures.

13. The Committee recommends that the authorities in Jersey consider amending relevant legislation to enable a withdrawal of the reservation to article 11 of the Covenant.

14. The Committee recommends that measures be taken to remove and prohibit any discrimination on grounds of sexual orientation (arts. 17 and 26).

15. The Committee notes with concern that the archaic and discriminatory provisions of the Criminal Code which make blasphemy a misdemeanour are still in force on the Isle of Man, and recommends that these be repealed (art. 19).

16. The Committee notes that consideration has been given in Jersey to amending the Separation and Maintenance Orders (Jersey) Law 1953 and recommends that all three jurisdictions introduce legislation and other effective measures to prohibit discrimination between women and men (arts. 3 and 26).

17. With reference to the withdrawal of the State party's reservation to article 25, the Committee urges the authorities to introduce further reforms that secure all their inhabitants full right of participation in the conduct of public affairs.

18. The Committee recommends that the authorities complete the current process of enacting legislation outlawing all racial discrimination. In accordance with article 26, the authorities should also promulgate legislation which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

D. Dissemination of information about the Covenant (art. 2)

19. The Committee requests that the sixth periodic report concerning Jersey, Guernsey and the Isle of Man be submitted together with the sixth report of the United Kingdom and Northern Ireland, at a date to be set after the examination of the pending fifth report. That report should be prepared in accordance with the revised Guidelines adopted by the Committee (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised in the present concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Jersey, Guernsey and the Isle of Man.

UNITED
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CCPR

international covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.120
25 April 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Mongolia

GE.00-41625 (E)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Mongolia

1. The Committee considered the fourth periodic report of Mongolia (CCPR/C/103/Add.7) at its1825th and 1826th meetings, held on 22 and 23 March 2000, and adopted the following comments at its 1835th meeting, held on 29 March 2000.

A. Introduction

2. The Committee expresses its satisfaction at the submission of the fourth periodic report of Mongolia, which contains valuable information on key legal developments in Mongolia, and welcomes the opportunity to examine the report in a frank discussion with the delegation. However, the Committee deeply regrets the paucity of information presented, both in the report and in many of the answers given orally by the delegation, on the enjoyment in practice of the rights provided for in the Covenant. The lack of such information severely impairs the Committee's ability to carry out its responsibilities to assess the situation in regard to the implementation of the Covenant.

3. The Committee recognizes the substantial progress made towards the establishment of democratic institutions and the enactment of legislation which seeks to ensure many Covenant rights.

B. Positive aspects

4. The State party is commended for taking account in the report of the Committee's concluding observations following its examination of the third periodic report.

5. The Committee notes with satisfaction that the State party has welcomed international assistance in institution-building and capacity-building, particularly in relation to the protection of human rights.

6. The Committee welcomes the Law on the Freedom of the Press. It also welcomes the improvements with respect to freedom of association made possible by the 1997 Law on Non-governmental Organizations and the emergence of a free Bar Association.

C. Principal subjects of concern and recommendations

7. The status of the Covenant in domestic law is not clear, in view of the fact that the Constitution (art. 10 (3)) stands in conjunction with laws of lower status; the Committee notes that no example was adduced of reliance on any article of the Covenant in any court proceedings to date.

It should be made clear by law that Covenant rights shall have superior status and shall prevail over domestic law in case of any conflict.

8. Many areas of concern remain in relation to discrimination against women and the inability of women fully to enjoy Covenant rights (arts. 3 and 26 of the Covenant). In particular, attention has been drawn to:

(a) A general deterioration in the status of women in society, especially in the political sphere, despite their high standard of competence;

(b) The acute problem of maternal mortality, due in part to unsafe abortions, and the unavailability of family planning advice and facilities;

(c) Discrimination against women in private sector employment, with effective impunity of employers in the face of court judgements;

(d) Failure to prosecute persons engaged in organizing prostitution or to adopt effective measures to combat trafficking in women;

(e) The growing incidence of domestic violence and the failure to prosecute perpetrators under the relevant article of the Code of Criminal Procedure;

(f) The necessity to prove violence in order to obtain a conviction for rape;

(g) The failure to make marital rape an offence.

The next report should provide in much greater detail statistics concerning the position of women by way of their participation in public life, private employment and in other relevant respects. It should also include details on the "National Programme on Improving the Status of Mongolian Women" and on other actions taken to combat all the above violations of human rights by administrative, medical, educational and legal measures. Prosecution for violations, where they constitute offences, should be sought and civil remedies properly enforced.

9. The Committee regrets that it has been largely precluded, through lack of information in the report and in the delegation's response to oral questions, from examining compliance of the State party's judicial procedures with the rights guaranteed under article 14 of the Covenant.

The next report should provide information, in detail, on:

(a) Any threats to the independence and impartiality of the judiciary, including those that may result from low remuneration;

(b) Practical means of guaranteeing all aspects of due process spelt out in article 14 (3) of the Covenant and article 16 (14) of the Constitution;

(c) The right to review of a conviction in every case, including trials at first instance by the Supreme Court under article 50 (1) (1) of the Constitution (art. 14 (5) of the Covenant).

10. The Committee is deeply concerned that the General Department for Implementation of Judicial Decisions, within the Ministry of Justice, has not been able to ensure that victims of human rights violations obtain in practice the benefit of remedies that have been granted by the courts (art. 2 (3) of the Covenant).

The Committee reminds the State party of its obligation under article 2 (3) to ensure that all victims shall have effective remedy for violations of Covenant rights; the State party should ensure that the General Department for Implementation of Judicial Decisions provides such remedies.

11. The Committee is deeply concerned about all aspects of detention before trial; neither the report nor the delegation's answers give adequate details about:

(a) Grounds for detention without bail;

(b) Conditions of detainees' confinement by the police;

(c) Remedies for violations of a detainee's rights by the police;

(d) Means of ensuring that a detainee is promptly brought before a judge or judicial officer;

(e) Statistics on the length of detention within the 26-month maximum;

(f) The extent to which, in practice, the Procurator-General exercises supervision over the necessity for, length and conditions of detention (art. 9 of the Covenant).

The State party should urgently implement its proposal to set up an adequate mechanism to oversee all such matters, to provide individual remedies to detainees whose Covenant rights are violated and generally to review the operation of the Detention Law (1999), in accordance with article 9 (3, 4) of the Covenant.

The State party should give details in its next report on the grounds for which persons may be detained by administrative action and the remedies available to such persons.

12. The Committee is seriously concerned by information it has received that a number of prisoners died of starvation during the reporting period. In this regard, it welcomes the recent changes in law and practice by which food is provided to all prisoners. However, the Committee retains its concern for the lack of other humane conditions of detention, such as timely medical care, sanitation and adequate space for prisoners (art. 10 of the Covenant).

Steps should be taken to improve prison conditions to ensure that imprisonment does not damage prisoners' health and to introduce alternative forms of punishment other than imprisonment; the next periodic report should indicate by what means prisoners may make complaints about their treatment and the effectiveness of the only existing remedy, namely recourse to the courts.

13. The Committee notes the limitation of the categories of persons on whom, and crimes for which, the death sentence may be passed and welcomes the commutation of many death sentences by the Supreme Court or the President to life imprisonment (art. 6 of the Covenant).

The State party is urged to reconsider the necessity to maintain the death penalty.

14. The Constitution or the Law on Emergency Situations, or both, should be amended to protect fully all non-derogable rights enumerated in article 4 of the Covenant.

15. The Committee is concerned about the problems confronting the population of remote regions of the territory described by the delegation (art. 26 of the Covenant).

Efforts should continue to ensure that persons throughout rural areas of the country have access to education and to medical treatment and other public facilities that are available to those who live in urban areas.

16. The Committee regrets the absence of specific information on freedom of religion and beliefs and notes that, in its decision of 12 January 1994, the Constitutional Court considered that certain aspects of the Law on the Relationship between the State and the Church were unconstitutional.

In its next report, the State party should provide specific information on the effect of the decision of the Constitutional Court, on the consequences resulting from the dominant character of Buddhism, and generally on the legal regime and practices with regard to freedom of religion and beliefs as well as on full compliance with article 18 of the Covenant.

17. The Committee notes that the State party recognizes only the Khazakhs as an ethnic, religious or linguistic minority whose members are entitled to the rights specified in article 27, despite the existence of numerous other such minorities in Mongolia.

The State party should ensure respect for the rights of all persons belonging to such minorities in accordance with article 27 of the Covenant.

D. Dissemination of information about the Covenant (article 2)

18. The texts of the Covenant and of the Optional Protocol should be made more widely available to the public, together with an explanation that the former may be relied on in the courts in order to obtain remedies and that the latter provides recourse to the Human Rights Committee.

The State party should emphasize the importance of human rights education and should seek to impart such education and information to the population who live o ıtside urban areas and to the illiterate by appropriate means such as radio and other media.

19. Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fifth periodic report should be prepared in accordance with those guidelines and submitted by 31 March 2003. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Mongolia.

UNITED
NATIONS

CCPR

International covenant
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Distr.
GENERAL

CCPR/C/79/Add.121
25 April 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Guyana

1. The Committee considered the second periodic report of Guyana (CCPR/C/GUY/99/2) at its 1829th to 1830th meetings, held on 24 and 27 March 2000, and adopted at its 1836th meeting on 30 March 2000 the following comments:

A. Introduction

2. The Committee expresses its satisfaction at the submission of the second periodic report of Guyana. It welcomes the opportunity to examine the State party's report after over a decade in which the State party has failed to fulfil its reporting obligations under article 40 of the Covenant. The Committee regrets that the report deals with the situation only up to 1987 and that it fails to provide information on the practical implementation of rights protected by the Covenant.

3. The Committee welcomes that copies of legislation were provided by the State party during the session, but regrets that the delegation was unable to provide full information on the current situation in the State party in answer to the list of issues and the Committee members' questions. The Committee notes that the list of issues was provided to the State party some months before the session. Some helpful written information was provided to the Committee during the discussions but did not address all the questions posed.

B. Positive aspects

4. The Committee notes with satisfaction the efforts being made by the State party to harmonize many aspects of the domestic legal order with international standards in its transition to democratic rule.

5. The Committee welcomes the enactment of the Domestic Violence Act in 1996 and its extension to children.

C. Principal subjects of concern and recommendations

6. The Committee is concerned that not all Covenant rights have been included in the current Constitution and therefore cannot be directly enforced. No information was provided as to how the rights that are enumerated in the Constitution are given effect and how their violations are remedied. The Committee notes that a Constitutional reform process is near completion in the State party, but regrets that the Delegation could not provide specific information as to how the enjoyment of Covenant rights will be ensured by the new Constitution.

> The State party should ensure that all Covenant rights are implemented in domestic law and should give consideration to including those rights in the new Constitution. It should also explain how the new Caribbean Court of Appeal will affect the remedies available to alleged victims of human rights violations.

7. The Committee regrets the continued application of the death penalty and is particularly concerned that in some cases the procedural safeguards of fair trial may not have been respected in imposing the death penalty, contrary to articles 6 and 14 of the Covenant.

> The State party is encouraged to consider the abolition of the death penalty. The State party must take measures to ensure strict compliance with procedural safeguards in all criminal cases.

8. The Committee regrets the lack of information concerning the right to legal assistance in practice for persons charged with criminal offences and urges the State party to ensure that its obligations in that regard under article 14 of the Covenant are fully met.

9. The Committee regrets that the State party has not taken steps to implement the Committee's Views in respect of communication No. 676/1996 (Yasseen and Thomas v. Guyana) under the Optional Protocol.

> The State party is urged to fully implement the Committee's Views in communication No. 676/1996 and to formally withdraw its reservation made on its re-accession to the Optional Protocol. The State party should consider adopting appropriate procedures for taking into account the Committee's Views under the Optional Protocol.

10. The Committee is deeply concerned about allegations that extrajudicial killings by the police take place in the State party and at information received alleging widespread police

brutality. The Committee is further concerned that the State party was unable to provide information about specific incidents to which the Committee drew attention.

Allegations of extrajudicial killings and excessive use of force should be promptly investigated by an impartial body and measures taken to ensure the prosecution of offenders and to provide effective remedies to victims. All law enforcement officials should be thoroughly trained in international human rights standards, particularly those contained in the Covenant (arts. 6, 7 and 10).

11. The State party should include detailed information in its next report about the role and functions of the Police Complaints Authority, measures taken to ensure its independence and impartiality, its relationship with other police investigative mechanisms and the implementation and effectiveness of its decisions and recommendations (arts. 6 and 7).

12. The Committee is concerned that corporal punishment is still resorted to in the State party and regrets the lack of specific information on this issue.

The State party should take legal and other measures to eliminate this practice (art. 7).

13. The Committee is concerned at the low level of participation by women in the workforce and in the conduct of public affairs. It regrets that the State party could not provide any information on the application and effect of the Anti-Discrimination Act of 1997 or the Equal Rights Act of 1990. It is also concerned at the apparent conflict between article 29 of the Constitution, which mandates equal rights for women and men, and article 149 (3) (b), which excludes from the prohibition on discrimination laws dealing with marriage, divorce, and inheritance.

The State party is urged to take positive measures to ensure equality of opportunity for women in all fields and to ensure that the principles of equality and non-discrimination on all grounds and in all areas of activity are fully implemented in the new Constitution.

14. The Committee is concerned that the Domestic Violence Act of 1996 appears to have been applied in very few cases and at the lack of information relating to its impact in reducing the level of violence against women.

Police and other law enforcement personnel should be trained to understand the importance of ensuring that women who are victims of violence are accorded equal protection and that preventive and punitive measures are enforced.

15. The Committee regrets that the law relating to the arrest and charge of suspects does not appear to ensure compliance with article 9 of the Covenant in that it does not provide for persons to be brought promptly before a judge or provide an enforceable right to compensation against the State in case of unlawful arrest. The Committee regrets deeply that the periods of pre-trial detention are prolonged for as long as three or four years.

The State party should review its laws on arrest and detention and should take effective legal and other measures to reduce the period of pre-trial detention and to ensure full compliance with article 9 ((3) and (5)) of the Covenant.

16. The Committee expresses its profound concern that children, including children under 10 years of age, are held in detention on remand.

The State party should take immediate steps to ensure that children are not held in detention together with adults and that young children are not held in detention at all (arts. 10 (2) and 24).

17. The Committee expresses deep concern over dire prison conditions (art. 10 of the Covenant), including poor sanitation and lack of adequate food and medical care, resulting in disease and death. This is exacerbated by the excessive recourse to imprisonment as a punishment or as a preventive measure and by the overcrowding of prisons.

The State party is reminded of its obligation under article 10 to ensure that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It is encouraged to consider greater use of alternative forms of punishment or preventive measures.

18. The Committee notes proposals to recruit part-time and temporary judges, to deal with the backlog of cases waiting to be tried.

The State party is urged to ensure that these measures do not undermine the competence, independence and impartiality of the judiciary.

19. The Committee is concerned that freedom of expression may be unduly restricted by reason of the government monopoly of radio broadcasting. It is also concerned at the lack of specific remedies for journalists who have been subjected to violence or harassment by the police or other authorities (art. 19).

The State party should remove restrictions on freedom of expression which are incompatible with article 19, paragraph (3), and should ensure that effective remedies are available to any person whose rights under article 19 of the Covenant have been violated.

20. The Committee is concerned at insufficient attention being paid to the need for multi-ethnicity within the police force, and at reports of considerable ethnic tension and at manifestation of incitement to discrimination, hostility or violence on racial grounds.

The State party should encourage recruitment to the police force of members of all ethnic communities, and ensure strict compliance with article 20 (2) of the Covenant by enforcing the prohibition of incitement to racial hostility and by taking measures to reduce ethnic tension between all the different groups in Guyana.

21. The Committee regrets the delay by the State party in amending the Amerindian Act, and is concerned that members of the indigenous Amerindian minority do not enjoy fully the right to

equality before the law. It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, that in some cases insufficient land is demarcated to enable them to pursue their traditional economic activities and that there appears to be no effective means to enable members of Amerindian communities to enforce their rights under article 27.

> The State party should ensure that there are effective measures of protection to enable members of indigenous Amerindian communities to participate in decisions which affect them and to enforce their right to enjoy their rights under the Covenant.

22. The Committee draws the attention of the State party to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The third periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of rights in practice. It should indicate the measures taken to give effect to these concluding observations. The third periodic report should be submitted by 31 March 2003.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/79/Add.122
4 May 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments by the Republic of Korea on the concluding observations
of the Human Rights Committee

Section D, paragraph 7

1. The final sentence of paragraph 7 reads:

"The Committee is concerned that article 6 of the Constitution, according to which international treaties ratified by the State party have the same effect as domestic law, has been interpreted as implying that legislation enacted after accession to the Covenant has status superior to that of Covenant rights."

The Government of the Republic of Korea would like to point out that article 6 of the Constitution has never been interpreted in this way. Furthermore, Korea has never enacted municipal law that has been in contradiction to a ratified international treaty. Likewise, Korea will be committed to its fulfilment of all applicable international agreements in the future.

Section D, paragraph 15

2. Paragraph 15 states, in part:

"The 'law-abidance oath' imposed on some prisoners, as a condition for their release, should be abolished."

This statement is factually incorrect, because the law-abidance oath is not a condition for the release of prisoners. During the Committee's review on 22 October 1999, it was clearly noted to the Committee that the oath is not a prerequisite for release, but is to be used as a reference. In the special amnesty of 15 August 1999, for example, 49 National Security Law offenders were released, even though they refused to sign the oath.

Section D, paragraph 16

3. The Committee requested that the Government provide full details on the system and actual practice of judicial appointments. The Government wishes to submit information on the judicial appointment system as follows:

(Term of office, appointment and age limit of judges)

4. Article 104 of the Constitution stipulates:

1. The Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly.

2. The Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly.

3. Judges other than the Chief Justice and the Supreme Court Justices shall be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices.

5. Article 105 of the Constitution stipulates:

1. The term of office of the Chief Justice shall be six years and he shall not be reappointed.

2. The term of office of the Supreme Court Justices shall be six years and they may be reappointed as prescribed by the Act.

3. The term of office of judges other than the Chief Justice and the Supreme Court Justices shall be 10 years, and they may be reappointed in accordance with the provisions of law.

4. The retirement age of judges shall be determined by law.

6. Article 45 of the Court Organization Act stipulates:

1. The Chief Justice of the Supreme Court shall be appointed for a six-year term of office, and shall not be reappointed.

2. The Supreme Court Justices shall be appointed for a six-year term of office, and the term may be renewed.

3. Judges other than the Chief Justice and the Supreme Court Justices shall be appointed for a 10-year term of office, and the term may be renewed.

4. The age limit for the Chief Justice of the Supreme Court shall be 70 years of age, the Supreme Court Justices, 65 years of age, and other judges, 63 years of age.

(Judicial reappointment system)

7. The reappointment of a judge is determined by reviewing whether the judge is still qualified to perform his or her duties. In reviewing their reappointments, all relevant elements are taken into consideration, including their job competence, ability, personality and health. The judicial personnel committee is also consulted in this regard.

8. The judicial reappointment system does not affect the independence of judges since the purpose of the system is to review the qualifications of judges, not to infringe judicial independence.

9. Since 1990 there have been three instances where judges failed to be reappointed.

Section D, paragraph 17

10. The first sentence of paragraph 17 reads:

"The extensive use of wiretapping raises serious questions of compliance by the State party with article 17 of the Covenant."

The term "extensive" is not acceptable as it is unqualified and is not based on established facts. It may be reiterated that Korean law expressly prohibits the use of wiretapping unless warranted by a court, with rare exceptions made only when circumstances prevent law enforcement officials from obtaining the necessary warrant in due time. In these latter cases, Korean law requires law enforcement agents to acquire a warrant within 48 hours of the implementation of any such action.

Section D, paragraph 18

11. The third sentence of paragraph 18 reads:

"The absolute restrictions on the right to hold assemblies on main roads imposed by the State party do not meet these standards."

12. The Government would point out that the phrase "the absolute restrictions" is not factual. Pursuant to article 12 of the Assembly and Demonstration Act, the head of the relevant police authority may prohibit assemblies or demonstrations on some main roads, if it is deemed necessary for the smooth flow of traffic. The intent of this legislation is to accommodate the

conflicting interests of public order and the right to assemble. In practice, however, most of the applications for assemblies or demonstrations on main roads are granted, on the condition that traffic flow and order are maintained.

Section D, paragraph 19

13. The second sentence of paragraph 19 reads:

> "Nevertheless, the Committee is concerned that the remaining restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, paragraph 2, of the Covenant."
>
> Concerning the right to freedom of association by teachers, the Government would refer to the discussion between the State party and the Committee, in which the Korean delegation made it clear that the freedom of association for teachers is indeed permitted, as evidenced by the enactment of the Act on the Establishment and Management of the Teachers' Union on 1 July 1999.

14. With regard to the right to freedom of association for public servants, the Government is pleased to inform the Committee that the Act on the Establishment and Management of the Public Servants' Work-place Association was enacted in February 1998. Furthermore, as of 31 December 1999, 76 work-place associations were established. The Government will consider taking further gradual measures to guarantee the freedom of association of public servants. It should be noted that Korea still maintains its reservations on article 22 of the Covenant.

UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/79/Add.123
24 August 2000

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Seventieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments by the Government of Mexico on the concluding observations of the Human Rights Committee

The Government of Mexico, having read the comments of the Human Rights Committee contained in document CCPR/C/79/Add.109 of 27 July 1999, wishes to express its satisfaction at the positive remarks made concerning its implementation of the Covenant and attaches herewith information designed to correct the statements of the Committee which are inaccurate.

1. In paragraph 6, the Committee states: "not all forms of torture are necessarily covered by law in all Mexican States".

We would like to note that this statement is not correct, as all forms of torture are covered by law in all Mexican States.

All the forms of torture specified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are punished under both federal law and the legislation of the 31 States of the Republic. All States have an Act for the Prevention and Punishment of Torture.

The definition of torture set forth in the Federal Act for the Prevention and Punishment of Torture, contained in articles 3, 5 and 6, is consistent with the definition contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(a) "There is no independent body to investigate the substantial number of complaints regarding acts of torture and cruel, inhuman or degrading treatment."

On the contrary, an independent body responsible for investigating complaints does exist. The Committee itself, in paragraph 3, notes with satisfaction the legal reforms which strengthened the independence of the National Human Rights Commission. The constitutional reforms were adopted by Congress, and, after being ratified by all the State Congresses, are already in force.

In addition, the Public Prosecutor is responsible for conducting an investigation and establishing the facts in the Case and the courts, which are independent from the executive branch, are responsible for determining guilt and ordering punishment.

The investigation and prosecution of offences is the exclusive responsibility of the Public Prosecutor's Office; torture is regarded in Mexico as a serious offence and the Public Prosecutor's Office is responsible for investigating possible acts of torture and prosecuting the alleged perpetrators. The judiciary determines the applicable penalty, based on the legislation in force.

The Public Prosecutor's Office enjoys complete autonomy and the authority needed to carry out its investigative work.

(b) "The acts of torture, enforced disappearances and extrajudicial executions which have taken place have not been investigated; (...) the persons responsible for those acts have not been brought to justice."

All complaints of acts of torture, enforced disappearances and extrajudicial executions lodged with the Public Prosecutor's Office have also been investigated for the purpose of clarifying the facts and, if necessary, prosecuting those responsible.

The Government of Mexico has provided the Committee with clear and comprehensive statistical information about the investigations conducted on all the complaints submitted, the number of persons involved and any penalties imposed.

(c) "The victims or their families have not received compensation."

Wherever appropriate, the victims or their families have received compensation.

The Government of Mexico has provided the Committee with detailed information on the cases in which the victims and their relatives received compensation.

Accordingly, as far as paragraph 6 is concerned, the Government of Mexico has already taken all the measures needed for compliance with paragraphs 6 and 7 of the Covenant.

2. In paragraph 7, the Committee expresses the following concerns:

(a) "The possibility exists of placing on an accused person the burden of proof that a confession has been obtained by coercion".

This statement is erroneous; when complaints of torture are submitted it is not for the victim to provide proof but for the Public Prosecutor's Office to conduct an investigation.

The Public Prosecutor's Office is responsible for conducting an investigation and, if necessary, establishing the facts in the case. The victims of torture are not required to provide proof; it is sufficient for them to lodge the complaint in order for the investigation to begin.

(b) "Confessions obtained by coercion may be used as evidence against an accused person."

This statement is incorrect. In Mexico a confession obtained by coercion cannot be used as evidence against the accused. The law stipulates that no confession obtained by coercion is admissible as evidence.

To ensure that evidence is admissible, criminal legislation in Mexico sets forth a series of requirements without which it loses all validity: in particular, it must be made to a judicial authority and in the presence of a person whom the accused trusts, which guarantees that confessions cannot be obtained by coercion. In addition, for several years, confession, in criminal matters, has been regarded as only one type of evidence, which has to be corroborated by other types.

It is not sufficient in and of itself to convict any individual.

The Federal Code of Criminal Procedure contains explicit rules governing confession and its probative value at the pre-trial and trial phases.

Article 279 of the Code sets forth an obligation for the judicial authority to assess the value of the confession, based on the requirements laid down in article 287. Article 287 states that a confession made to the Public Prosecutor or the Court must meet the following requirements:

I. That it be made by a person not under 18 years of age, against himself, in full awareness, subject neither to coercion nor to physical or moral violence;

II. That it be made to the Public Prosecutor's Office or the court trying the case, in the presence of the accused person's defence counsel or a person whom the accused trusts, and that the accused be duly informed of the procedure and process;

III. That it concern an act of his own commission; and

IV. That there are no circumstances which, in the opinion of the judge or court, make it implausible.

The article states, "No one may be held for trial when the sole incriminating evidence is his confession. The judicial police is empowered to submit reports but not to obtain confessions, which, were it to do so, would lack any probative value."

Any steps taken by officers of the federal or local judicial police have the value only of testimony, which must be supplemented by other evidence in order to have probative value.

The Code of Criminal Procedure for the Federal District and the State Codes of Criminal procedure have similar provisions:

"Article 249. A confession made to the Public Prosecutor's Office or the Court must meet the following requirements:

That it be made by a person not under 18 years of age, against himself, in full awareness, subject neither to coercion nor to physical or moral violence;

That it concern an act of his own commission;

That it be made to the Public Prosecutor's Office or the court trying the case, in the presence of the accused person's defence counsel or person in the accused's confidence, and that the accused be duly informed of the procedure and process; and

That there are no circumstances or evidence which, in the opinion of the judge or court, make it implausible."

These articles are strengthened by a large body of case law of the Supreme Court of Justice of the Nation, to the effect that confessions obtained by physical or psychological coercion, including those obtained during detention exceeding the time-limits set forth by the Constitution and the laws, shall lack any probative value (the relevant decisions are attached).

Accordingly, the recommendation contained in paragraph 7 has been fully met.

3. In paragraph 8, the Committee states, "order should be maintained within the country through the civil security forces".

It is certainly true that order should be maintained within a country through the civil security forces. Precisely to improve security of persons, given the lack of trained staff, some former members of the armed forces have been used in maintaining order. A police academy has also been established. The Attorney-General's Office has replaced a considerable number of its staff. It is true that, in exceptional cases, the armed forces are used to protect the citizenry and temporarily assist the civil authorities, in the framework of the legislation in force.

The armed forces are responsible for implementing the Federal Firearms and Explosives Act, and, in some regions, cooperate in action to combat the drug traffic.

4. In paragraph 9, the Committee states that it is "concerned by the fact that no institutionalized procedures exist for the investigation of allegations of violations of human rights presumed to have been committed by members of the armed forces and by the security forces, and that as a consequence those allegations are frequently not investigated."

This interpretation is incorrect:

(a) Institutionalized bodies and procedures do exist for the administration of justice in military matters. Allegations of violations are investigated and, where necessary, punished. The penalties laid down in the Code of Military Justice are in many cases more severe than those provided for by the ordinary legislation.

(b) The bodies in charge of the administration of justice continually prosecute and punish, according to each case and the competent body, complaints of human rights violations committed by the security forces.

The National Human Rights Commission is also empowered to receive and investigate complaints in this area;

In short, the Government of Mexico has established appropriate procedures for investigating alleged violations and prosecuting those responsible.

5. In paragraph 10, the Committee expresses several concerns regarding the implementation of the Act Establishing Coordination between National Public Security Systems and the Act Against Organized Crime, as well as the concept of flagrancy.

On these points, the Committee is informed that:

(a) The concept of flagrancy has been limited and circumscribed to very specific cases.[1]

It is prohibited to hold detained persons incommunicado. All detainees have the right to have and be represented by counsel from the time they are detained. The amendments to the legislation have been aimed at increasing individual security.

Accordingly, these provisions are not inconsistent with article 9 of the Covenant.

6. In paragraph 11 the Committee states, "The criminal procedure established and applied in Mexico constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge, in the presence of the accused person and at a public hearing."

This statement is incorrect: the Mexican Constitution and the laws deriving from it guarantee every accused person the right to be informed of the nature and cause of the charge against him, to be heard in public by a competent and independent tribunal and to be confronted with those accusing him.

One of the rights guaranteed to every accused person by the Constitution and laws is the right to be present at all stages of the preliminary investigation and trial, in order to provide evidence he deems appropriate in his defence.

The Codes of Criminal Procedures guarantee that hearings shall be public, that an accused person shall be allowed to defend himself or be defended by counsel, of which purpose both shall have the full right to be heard (Federal Code of Criminal Procedure, arts. 86 and 90).

The Constitution and laws of Mexico are fully consistent with the principles set forth in article 14 of the Covenant. Accused persons are therefore provided with all guarantees of due process.

7. In paragraph 12, the Committee states:

> "Although a state of emergency has not been proclaimed in areas in conflict, the population has been subjected to derogations from its rights corresponding to a state of emergency, such as control points impeding freedom of movement."

This statement is incorrect; nowhere in the national territory have there been any derogations from the rights established in the Covenant.

Control points do not impede freedom of movement. They are merely checkpoints, established in the context of legislation to combat the drug traffic, carrying and use of firearms and the transborder traffic in persons.

8. In paragraph 13, the Committee expresses concern at the alleged "obstacles to the free movement of foreigners, especially the members of non-governmental organizations investigating human rights violations on Mexican territory".

This statement is incorrect. Like most countries in the world, Mexico has migration regulations governing foreigners' entry into and stay in the national territory. As consistent with the Covenant, foreigners' activities in a few areas are regulated. Foreigners cannot take part in political activities.

The migration laws covering human rights observers are compatible with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and *Protect Universally Recognized Human Rights and Fundamental Freedoms.*

Human rights observers receive special visas authorizing them to perform their work. Their activities must be consistent with the rules specified by the migration authorities.

9. In paragraph 14, the Committee states that it "deplores the serious violations of freedom of expression represented by the frequent murders of journalists" and by the "acts of intimidation making it difficult for representatives of the press to exercise their profession freely in Mexico or preventing them from doing so".

This statement is incorrect: There is complete freedom of expression in Mexico.

A few journalists have been attacked by criminals linked in some cases to the drug traffic. The Government of Mexico not only deplores these cases but investigates each one, and in several cases those responsible have already been tried.

Furthermore, the Government has established programmes to guarantee the protection of journalists.

The Committee "also deplores the existence of the offence of 'defamation of the State'".

This completely groundless statement is surprising, as there is no offence of "defamation of the State", or any similar offence, in Mexico.

Accordingly, this recommendation is inappropriate.

10. In paragraph 15, the Committee "deplores the situation of street children, which is constantly worsening".

The Government of Mexico has adopted measures and programmes to protect street children and combat child prostitution and child pornography.

This statement is inconsistent with the Committee's own remarks in paragraph 3 of the document under review, in which it takes note with satisfaction of the programmes undertaken by the Government of Mexico to improve the situation of women, children and the family.

Similarly, harsher laws and penalties have also been established for offenders, a Plan of Action to Prevent, Address and Eradicate Commercial Sexual Exploitation of Children has been launched and a National Inter-Institutional Commission to Eradicate the Sexual Exploitation of Children has been set up.

In the area of prevention, orientation and support modules have been created to dispense educational programmes aimed at reducing and avoiding drug dependency, sexually transmitted diseases, the sex trade and sexual abuse of children, and to stimulate the interest of children in particularly difficult conditions, such as street children, in cultural, recreational and sports activities.

Intensive programmes have been conducted to disseminate the rights of the child among children in the Child Development Centres (CADI); in coordination with the National System for the Integral Development of the Family (DIF), 25 workshops were conducted in the Federal District, in which 861 pre-school children took part.

Awareness-raising courses have also been held on the treatment and rights of street children, for police officers in the capital. Some of them have been organized with Government and NGO cooperation.

Support has been provided for the establishment of specialized agencies to deal with children's affairs, 20 of which are now in existence in various States of the Republic.

11. In paragraph 16, the Committee states that it is "concerned at the level of violence against women" and by "the many reported cases of abduction and murder which have not led to the arrest or trial of the perpetrators".

In this connection, the Committee is informed that action to combat violence against women is a priority of the Government of Mexico. Violence against women is a practice which is on the decline, thanks to cooperation from women's groups throughout the country.

Among the activities conducted and measures taken are the following:

The Public Prosecutor's Office scheme of specialized agencies to deal with sexual offences. Four such specialized agencies to handle sexual offences were set up in 1989 in the Federal District, and the necessary regulations were issued to enable them to operate as an integral part of the public prosecution service. Three victim support centres were also established: the Support Therapy Centre (CTA), the Domestic Violence Care Centre (CAVI) and the Missing and Absent Persons Support Centre (CAPEA). Support was also offered to those States of the Republic which have shown an interest in initiating similar programmes.

CAVI has provided legal, psychological and medical assistance to slightly more than 90,000 people, most of them women.

Specialized agencies to deal with sexual offences have been set up and care programmes for victims initiated in 27 States of the Mexican Republic to date.

As part of the 1990 reform of the Criminal Code of the Federal District sexual harassment was characterized as an offence concerning not only the conduct of a landlord, employer or supervisor but the conduct of any person in a position of authority over women.

In 1994 the Specialized Care and Legal Aid Unit was established and the Comprehensive Care Programme for the Victims of Sexual Attacks began operating in the Federal District.

In March 1995, the Federal District Department of Public Prosecution (PGJDF) established a sub-department of human rights and community services and a State office to deal with the victims of crime, for the purpose of coordinating the activities of the specialized agencies dealing with victims.

In April 1996, an amendment was added to the Federal District Government Procurator's Office Organization Act giving the Public Prosecutor's Office the authority to deal with crime victims by providing legal, social and psychological support.

The Coordinating Office of PRONAM designed a project to raise the awareness of judges in all federal entities of the importance of implementing the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Para", ratified by Mexico in 1998). To this end a handbook was prepared for use by the Public Prosecutor's Office and judiciary staff concerning the contents of the Convention and methods for implementing it. The handbook was also among the materials used for a series of regional workshops conducted in 1998 for Public Prosecutor's Office and judiciary officials, in particular those attached to the specialized agencies dealing with sexual offences, and the staff of the Support Therapy Centre for the victims of violence, the local human rights commissions, NGOs and representatives of the academic and civic sectors, among others.

Some important legislative changes have occurred in the area of action to combat domestic violence; worthy of mention is the Domestic Violence Prevention and Assistance Act, adopted by the Assembly of Representatives in plenary on 26 April 1996 and published in the Gaceta Oficial of the Federal District on 8 July 1996, which was the first specific instrument on the subject. The Act provides the victims of domestic violence with administrative options for achieving reconciliation or for protecting their physical integrity through a system of measures and sanctions which serves as a first phase or level of treatment, with legislative and institutional support, designed to avoid a deterioration in family relations.

Amendments have also been made to the Civil Code for the Federal District in Ordinary Matters and for the Republic as a Whole in Federal Matters, Code of Civil Procedure for the Federal District, Criminal Code for the Federal District in Ordinary Matters and for the Republic as a Whole in Federal Matters and Code of Criminal Procedure for the Federal District, published in the Diario Oficial of the Federation on 30 December 1997, in a effort to combat domestic violence and its implications within the family.

These amendments are aimed at three basic objectives: to discourage and punish behaviours which lead to domestic violence; to establish protective measures for the victims of domestic violence; to raise the people's awareness of the problem and to encourage the authorities to design public policies to prevent, combat and eradicate such behaviours.

It should be noted that domestic violence is now a ground for divorce. The judges hearing these cases may order, as temporary measures, a prohibition against either of the spouses from going to a particular place and any other measures necessary for avoiding acts of domestic violence.

In the criminal sphere, the amended legislation provides for measures of compensation. The person responsible for criminal acts undermining freedom and normal psychosexual development and acts of domestic violence is responsible for restitution of the item obtained by means of the offence and, should this be impossible, payment of its cost and any psychological treatment the victim may require.

A proposal to add a Chapter VIII, entitled "Domestic Violence", to Book Two, Title Nineteen of the substantive criminal legislation, was designed to treat as a protected legal asset, the harmonious coexistence within the home of the family members and any persons having a similar relationship to them owing to their cohabitation within the same physical space. Anyone

committing the offence of domestic violence shall be liable to six months' to four years' imprisonment and loss of maintenance rights, and must also undergo specialized psychological treatment. This offence is prosecuted on complaint by the injured party, unless the victim is a minor or incapacitated.

To help the victim and bring an end to the climate of violence in the home, the law also authorizes the Public Prosecutor's Office to order precautionary or security measures for the alleged perpetrator; these consist of the prohibition against going to a specific place, security for good behaviour or any other measures it considers necessary to safeguard the physical or psychological integrity of the victim. It is for the administrative authority to ensure compliance with these measures. At a later stage, if the preliminary investigation leads to prosecution, the judge hearing the case, taking the interests of the parties into account, may confirm or alter these measures. Lastly he may order the penalty raised by one third when the offender is a relative of the victim.

Under the new legislation, victims may initially address themselves to the administrative authorities, pursuant to the Domestic Violence Prevention and Assistance Act. At a later stage, they may bring civil proceedings and, in extreme cases, lodge a criminal complaint.

An amendment was also made to article 265, consisting of the addition of an article 265 bis stating that rape can also occur between spouses or unmarried consorts and laying down a custodial sentence for this offence: from 8 to 14 years' imprisonment, as also set by the Criminal Code.

The States of Coahuila, Oaxaca and Querétaro also have laws aimed at preventing domestic violence and caring for its victims. Other States have prepared bills on this subject (Chihuahua, Guerrero, Campeche, Michoacán, Veracruz, Chiapas, Morelos, Nuevo León, Puebla and Quintana Roo) for submission to the State congresses. Similarly, on 3 December 1997 federal and local legislators from all political parties agreed to review and prepare bills characterizing domestic and sexual violence as offences in States where no such legislation exists and to adopt legislative measures to protect women's rights and to eliminate all forms of discrimination against women from State legislation.

The abductions and killings reported have been investigated and the perpetrators punished.

The Committee has already received detailed information on the results of the investigations, the arrests made and the penalties imposed on the perpetrators in the cases submitted for its consideration, which can be transmitted to it again if it so wishes.

The Government of Mexico has no information concerning "many allegations of torture of women in detention". In order to investigate and punish the perpetrators of any crime, the competent authorities need to have received a complaint, which has not been lodged. If the Committee is in possession of any specific information, the Government of Mexico would appreciate it furnishing such in order that the case may be investigated. If the Committee has no such information it should abstain from making this type of allegation.

12. In paragraph 17, the Committee expresses concern at information to the effect that "Mexican women seeking employment in foreign enterprises in the frontier areas of Mexico ('maquiladoras') are subjected to pregnancy tests and required to respond to intrusive personal questioning, that some women employees have been administered anti-pregnancy drugs and that those allegations have not been seriously investigated".

The Government of Mexico shares this concern, hence serious investigations have been conducted into any complaints received.

The investigations into these complaints and the steps taken to secure equal rights for women in the area of hiring have been serious and extensive; a programme has been established within the Ministry of Labour and Social Security to investigate and follow up such complaints and channel them to the competent authorities in order that such practices may be punished. Draft amendments to the labour legislation are also being studied aimed at expressly prohibiting the requirement to provide proof that one is not pregnant in order to be hired.

Accordingly, the Government has already taken steps to investigate and prevent violations.

13. In paragraph 18, the Committee states that "the State party should approve measures to ensure equality of opportunity for women, their full participation in public life in conditions of equality and the removal of all remaining discriminatory provisions in regard to marriage, divorce and remarriage".

The Government of Mexico has taken numerous legislative measures to guarantee equality of opportunity for women.

There are no provisions in Mexican legislation which discriminate against women, either in regard to marriage, divorce or remarriage.

Ongoing efforts have been made to review the legislation in order to detect and remedy any deficiencies in the legislation which might encourage discriminatory practices.

14. In paragraph 19, the Committee states, "article 27 of the Constitution seems to protect only certain categories of rights with regard to indigenous lands and still leaves the indigenous populations exposed to a wide range of human rights violations", that "The State party should take all necessary measures to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources" and that "appropriate measures should also be taken to increase their participation in the country's institutions and the exercise of the right to self-determination".

Article 27 of the Constitution refers only to property; the remaining human rights are protected by other articles of the Constitution, such as the chapter on individual guarantees, due process, etc.

Article 4 states, "The Mexican Nation has a multicultural composition originally founded in its indigenous peoples. The law shall protect and promote the development of its languages, cultures, usages, customs, resources and specific forms of social organization and shall guarantee its constituent peoples effective access to the jurisdiction of the State. In the trials and agrarian proceedings in which those peoples may be involved account shall be taken of their legal practices and customs, in the terms to be established by law."

The amendments to article 27 of the Political Constitution of the United Mexican States set forth rules governing collective property and expand the powers of the representative bodies. They also provide the possibility for communities to enter into civil and commercial contracts and found associations for the purpose of securing sustainable development. They establish new bodies for the administration of agrarian justice, the agrarian tribunals, which are independent bodies in their own right. The tribunals' proceedings (known as agrarian procedures) are designed to secure the recognition and certification of communal assets, through non-contentious or contentious jurisdiction.

The implementation of article 27 is governed by subsidiary laws, such as the Agrarian Act, the General Ecological Balance and Environmental Protection Act and the Forestry Act, in particular, which provide for collective rights and participation of the communities in the development of their natural resources. The Government also works together with the communities to ensure that Mexican legislation is effectively applied throughout the federal entities in order to help indigenous agrarian units develop fully, based on their rights as landowners.

Local courts have also been established which take usages and customs into account in resolving minor conflicts and which respect the traditions of the different ethnic groups.

The Committee has been informed of the measures taken to combat the abuses to which the indigenous populations are subjected. The Government continues to work towards this end and has taken measures to guarantee respect for the indigenous peoples' customs and culture, including the usufruct of their lands and natural resources.

The Government has taken measures to ensure active participation by indigenous peoples in national institutions. There are indigenous deputies and senators in the Congress of the Union.

15. In paragraph 20, the Committee notes "the law does not recognize the status of conscientious objectors to military service" and suggests that the State party should ensure that persons required to perform military service can invoke conscientious objection as grounds for exemption.

Military service is a civic obligation. It is determined by lot, and may be performed on a flexible basis, especially for students. There has not been a single case of conscientious objection.

16. In paragraph 21, the Committee recommends dissemination of the text of Mexico's fourth periodic report and the Committee's concluding observations.

These documents will be distributed in due time.

In accordance with article 40, paragraph 5 of the Covenant and with rule 71 (2) of the Committee's rules of procedure, the Government of Mexico requests that the comments contained in this document should be included in the Committee's report to the Economic and Social Council and the Third Committee.

Note

[1] The Federal Code of Criminal Procedure specifies in detail the conditions and requirements which must be met in such cases.

Article 193 of the Federal Code of Criminal Procedure states: "Flagrancy shall be considered to have occurred when:

I. The accused is caught in the act of committing the offence;

II. The accused is pursued immediately after committing the offence; or

III. The accused is identified as the perpetrator by the victim, an eyewitness or a person having participated in the commission of the act together with him, or he has in his possession the object, instrument or product of the offence, or there are signs or evidence which give reason to believe that he has participated in the offence; provided that the offence in question is a serious offence as characterized by the law, that less than 48 hours have elapsed since the commission of the offence, that the respective preliminary investigation has been initiated and that the prosecution of the offence has not been interrupted.

In such cases, the Public Prosecutor's Office shall order the accused detained if the requirements of applicability have been met and the offence carries a custodial sentence, or shall order the detainee released, when the offence does not carry a custodial or alternative sentence.

Any infringement of the conditions set forth in the preceding paragraph shall render the person who has ordered the improper detention criminally responsible and the person detained shall be immediately released.

Should detention be ordered, the Public Prosecutor's Office shall immediately begin a preliminary investigation if it has not already done so."

For all legal purposes, the offences set forth in the following articles of the Criminal Code for the Federal District in Ordinary Matters and for the Republic as a Whole in Federal Matters are characterized as serious offences owing to their considerable negative implications for fundamental values of society: culpable homicide, art. 60, para. 3; treason, arts. 123, 124, 125 and 126; espionage, arts. 127 and 128; terrorism, art. 139, para. 1; sabotage, art. 140, para. 1, art. 142, para. 2 and art. 145; piracy, arts. 146 and 147; genocide, art. 149 bis; escape from prison, arts. 150 and 152; attacks on traffic arteries, arts. 168 and 170; unlawful use of facilities

intended for air transit, art. 172 bis, para. 3; attacks against health, arts. 194, 195, para. 1, 195 bis, except in the cases specified in the first two horizontal lines of the tables in appendix I, 196 bis, 197, para. 1 and 198, first part of para. 3; corruption of minors, art. 201; traffic in persons, art. 205, para. 2; exploitation of the body of a minor for the sex trade, art. 208; counterfeiting and alteration of currency, arts. 234, 236 and 237; rape, arts. 265, 266 and 266 bis; attacks on highways or roads, art. 286, para. 2; homicide, arts. 302 in conjunction with arts. 307, 313, 315, 315 bis, 320 and 323; abduction, art. 366, with the exception of the antepenultimate paragraph; aggravated theft, art. 367, in conjunction with art. 370, paras. 2 and 3, when committed in the circumstances referred to in arts. 372, 381, sections VIII, IX and X and 381 bis; theft, art. 371, last para.; extortion, art. 390 and transactions using resources of unlawful origin, art. 400 bis; the offences specified in arts. 83, section III, 83 bis, with the exception of sabres, bayonets and lances and 84 of the Federal Firearms and Explosives Act; torture, arts. 3 and 5 of the Federal Act for the Prevention and Punishment of Torture; traffic in undocumented persons, art. 138 of the General Population Act and the offences specified in arts. 104, sections II and III, last paragraph and 105, section IV of the Federal Tax Code.

The right of the accused to confer with counsel and/or a person whom he trusts (naturally including relatives) is a constitutional guarantee which comes into effect from the time the accused is detained and continues throughout the preliminary investigation and trial. It is in fact one of the indispensable requirements for the accused's statement to have procedural validity (Constitution, art. 20).